



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 23, 1998

Mr. David Anderson
Chief Counsel
Texas Education Agency
1701 North Congress
Austin, Texas 78701-1494

OR98-2832

Dear Mr. Anderson

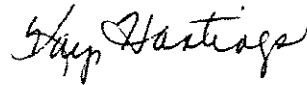
You ask this office to reconsider our decision in Open Records Letter No. 98-1950 (1998). Your request for reconsideration was assigned ID# 119815.

Open Records Letter No. 98-1950 (1998), which concerned a request for a copy of a complaint filed against USA Training Company, Inc. ("USA") with the Texas Education Agency (the "TEA"), determined that, pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege, the TEA may withhold from disclosure all information in the complaint that identifies the informer, including the informer's name, address, telephone and fax numbers, business information and the informer's statement to the extent necessary to protect the informer's identity. You now seek to withhold from disclosure the entire document based on section 552.103 of the Government Code.

Section 552.103(a) applies to information that is related to litigation that is pending or reasonably anticipated to which the governmental body is a party. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You assert that the information at issue relates to a pending administrative action against USA. You also aver that related administrative court litigation is reasonably anticipated. However, the TEA raised section 552.103 for the first time in this request for reconsideration. Discretionary exceptions to required public disclosure must be raised timely or they are waived. *See* Open Records Decision No. 515 (1988); Gov't Code § 552.301 (establishing ten-day deadline for raising exception to required public disclosure). Accordingly, as the TEA did not in this instance timely raise section 552.103, we conclude that section 552.103 is inapplicable.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Deputy Chief
Open Records Division

KHH/mjc

Ref.: ID# 119815

cc: Ms. Ginger Hill
USA Training Company, Inc.
8871 Tallwood
Austin, Texas 78759
(w/o enclosures)